

Virtual Reality:

How jurors finding information online can swing your case

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What You Don't Know Just Might Kill You

The online version of a city newspaper reports a severe-injury highway wreck with contested blame. Another report states that a civil trial will soon begin. Following the second report are readers' comments. One reader comments that he knew the plaintiff and claims he was a drug user and heavy drinker, so the wreck was "undoubtedly" the plaintiff's fault.

In fact, the plaintiff was neither drinker nor drug user, which would have been easy to prove to a jury. However, since the plaintiff's counsel had no idea there was such a comment online, it never occurred to her to bring it up in trial.

A juror on the case did a quick search on Google, found the comment, and conveyed the damaging information to the other jurors. On that basis the "hidden" fact caused a defense verdict. To this day the plaintiff's counsel probably has no idea why.

You can't fight what you don't know. This was an instance of how the online view of reality can easily warp a case.

Another perspective of reality found online, this time something true: a jury consultant, David Ball's partner Artemis Malekpour, discovered that the grown children of the dead parents in a wrongful-death case ran an organization that would have been found immoral and despicable by 95% of the venue's population. Ms. Malekpour discovered this with just a few minutes of searching Google. Next morning she notified her client, the plaintiff's counsel. Fortunately, the case had settled the previous evening, well into eight figures. Had the defense known what was easily accessible online, and what the jurors would have gone home and found online on the first evening of trial (or that the defense could have found a way to get into evidence), the defense would never have settled, and at trial would have been hit with no more than a small verdict.

In a third case, a particular medical treatment would have prevented serious harm to a hospital patient. The plaintiff had strong proof and a strong chance of vanquishing the defense expert. One juror went home and found – online – a seemingly neutral and reliable source. It reported a virtual reality that the

defense expert would not be able to say, since it could easily be shown to be false: that the treatment was highly experimental, dangerous, and almost never successful. But when the juror has seen it and you don't know about it, you don't bother to show that it's false. Virtual reality trumps true reality every time because virtual reality seems to jurors to be from a neutral source.

In a fourth case, the plaintiff's expert engineer never bothered to tell counsel that his engineering license in that state had been suspended. Yet a juror found that information online.

In a fifth case, a juror read somewhere online that there has to be a loss of consciousness for there to be brain damage. This bogus information agrees with the defense position. Since it's online the juror regards it as neutral, and the result is a verdict reflecting no brain damage.

Jurors don't even have to go home to access information online. Mobile devices can get to the same online information, and bailiffs follow jurors neither home nor to the bathroom stall.

Legal minds can try to figure out how to deal with this easily available information, but they will fail to find a way to keep it out of trials. They will fail because technology moves faster than legal changes. No judge can intimidate jurors into abandoning their beloved computers and mobile devices. Short of sequestering jurors without mobile devices, access to online information is now a permanent, problematic part of what jurors regard as "evidence" – and often the most important part.

We have already seen juries make their decisions based not merely on facts and law but on the virtual reality depicted online. This information revolution is only beginning. It will continue to evolve.

You can't fix the accessibility problem, but you must find out what's out there in the virtual world that relates to your case: people, "facts," the science, and more. You can't grapple with what you don't realize is out there, and when the defense knows about it (or has planted it), or a juror finds it, you can be dead in the water without even knowing you've left land.

No one knows the current extent of the problem; the practice is almost entirely covert. However, anyone who has interviewed jurors after trial, or who knows human nature, realizes that the problem is significant and growing.

After all, many jurors care a lot less about the judge's orders than they do about making the right decision. They don't trust either side as much as what they consider to be the "neutrality" of the virtual world.

Why You Should Do the Research

Jurors go online to find what they can about the parties and their families, witnesses, lawyers on both sides, matters of fact and science, standards in contention, and virtually everything else they can think of connected with the trial. What they find could be true, false, legally irrelevant yet damaging; it could be planted by the defense, some organization with an agenda, or just someone's kid. Your expert may have something on his Web site that could hurt you, such as "I have helped lawyers win even the weakest of cases" (yes, one did. True story!).

The defense thoroughly searches for what jurors will find. What follows will show you how to do your own search better than the defense, except when they have the research professionally done.

There are two kinds of information that are particularly important:

Things jurors might discover that you need to know to protect your case, and

Things you can use against the defense.

What You Should Research

Put yourself in the shoes of a persistent, clever juror who is trying to find everything he can to help him persuade other jurors against you and your arguments. The juror will first look for everything he can find out about your client, your client's family, your fact and expert witnesses, your firm¹, and everyone else who could possibly have something out there that would make you or your case look bad.

The juror will then try to find out if he can invalidate or validate the rules, standards, facts, science, statistics, and everything else you've presented. Even when the juror isn't hostile, he will likely seek information that confirms what he already believes and that he finds more comfortable to believe in. It's more comfortable for a juror who smokes to believe that smoking won't hurt *him*, that *he* won't get lung cancer, and that the expert witness giving testimony is really just overhyping the facts or even lying. If WebMD has an article that disagrees with statements you made in court and you don't know about it, you won't know that you might have to explain why that article isn't true. You might as well stay home in the first place if you aren't going to search for this kind of contradictory information, because without making the arguments necessary to win over the juror who goes to WebMD (and other sites) for his medical information, all of your efforts can easily come to nothing.

Jurors can be hostile and want to crash your case. The hostile juror will intentionally seek out alternatives to your claims about the facts, science, the law, and almost anything else you say. You need to know what he'll find so you can deal with it. If you claim that your client sustained a brain injury, the juror will research brain injuries to answer questions like: Is brain damage (or RSD, or whatever) really permanent? Can a particular impact cause the claimed injury? Can the particular injury really disable a person?

Even the friendly juror can turn against you because of what she finds online.

So you have to research every aspect of the case that could cross a juror's mind. Remember that what you don't know can kill your case.

¹ Be wary about what's on your firm's web site. Most attorneys' sites are intended to market services, which means that your site may be the last thing you want jurors to see. (Please see Part B, Step 2C: Companies responsible for the product or service.)

When to Do the Research

When feasible, do your first round of thorough research to help you decide whether to accept the case. You don't want to work up a case and then find something online that makes the case unwinnable.

Before you sign any experts to the case, research them. Don't end the case before it starts by letting someone testify who has damaging information online, like a YouTube video capturing him yelling obscenities or making statements in an interview that contradict what he'll be claiming for this case.

Do the next round of online research as you learn more about the case and who the witnesses and jurors will be.

Within no more than a week of trial, conduct another thorough search to find anything that has cropped up since the first thorough search. If you do this more than a week or two in advance you'll miss recent items, including items that the insurance company, defense, or defense-oriented professional and advocacy organizations plant for jurors to find. It's a nasty but easy and deadly maneuver.

When you don't have the time or resources to be so thorough, at least research the potential client and family before you accept the case. Then do as much research as possible in the last few weeks before trial.

When deciding how to spend your very limited time in preparing for the trial, remember that even one bad finding can kill your case if you don't know about it.

Who Should Do the Research?

Your goal is to find all that a purposeful, search-experienced juror might find. Do not assume that you know how to do this as well as some jurors do. A young juror who has grown up with a computer mouse in hand can be a far better searcher. However, don't assume that age is everything; for many senior citizens with time on their hands, online searching replaces bingo as a source of entertainment.

Being able to perform good online research doesn't just come with knowing how to work a computer. Good researching skills require training, practice, and knowledge of how to find particular kinds of information. If you're like most people, this kind of research is not within your skill set, at least not yet. It may seem easy, but performing good online research takes more than just going to Google; it takes knowing where and how to find different kinds of information. You'll need to find and search a wide variety of sites.

If you do this work yourself or assign it to a staff person in your office, you must not allow a cursory job. The results of the research might be minor in many cases, but sooner or later – and not much later – it will be serious enough to ruin a case.

You're in a race with whichever jurors might have time, energy, and know-how to do this right. They won't find just your political contributions, which can take less than ten seconds. They'll also find an

endless array of other details about your life— some true, some false, some about someone else with your name who seems like you. And that’s just on the topic of *you*.

When a case has a lot at stake and you cannot afford to gamble, you need a professional who knows the kinds of things to alert you to. For smaller cases, your own efforts will be far better than nothing, as long as your efforts are well-informed -- which is partly this paper’s purpose. Non-professionals are much more likely than professionals to miss important things, but doing no research at all will miss a whole lot more.

How Long Does it Take?

Average time to adequately research an individual varies widely. A professional researcher needs roughly an hour to an hour and a half for each individual. Multiply that by 150% when a bright, well-instructed non-professional does it.

Jurors: For prospective jurors, a professional researcher can do a sweep for major pieces of information in as little as 15 to 20 minutes per juror, though more time is safer. Allow a non-professional half again that much. Research on specific prospective jurors takes less time than everything else. This is because you can be relatively specific about what you are looking for, as compared to the open-ended challenge of researching the trial’s cast of characters and topics. Think of the online research of prospective jurors as an in-depth, improved version of the old-fashioned “drive-by,” which was rarely worth the time. Online research can reveal a lot more than a look at someone’s front yard: family and financial situations, political and often church affiliations, criminal and professional organization records, and on and on.

Once the jury is seated, you should conduct more open-ended, thorough research about each juror. You need to find out everything you can about your seated jurors. You might even find something that shows that a hostile juror materially lied in jury selection to get on the jury. Carefully researching each seated juror is always important, but it is particularly important when you had little or no jury selection time. So allow roughly an hour to 90 minutes per seated juror when a professional does it, and half again that time when your staff person does it.

As important as this stage is, you don’t want to do it yourself once trial has started.

How Do You Do It?

There are a few tools you need to begin:

- Time

Set aside a block of uninterrupted time for researching. If you keep needing to answer phone calls or are otherwise distracted, the research will suffer. Be patient. The results of the research are well worth the time you put into it.

- Internet access and a search engine

A search engine searches the Web and finds web pages that are relevant to your search terms. Each search engine will produce search results that are unique to that search engine.

General search engines include Google.com, Yahoo.com, Bing.com, and Altavista.com. These search engines will search all file formats that their web crawlers have located on the Web. Web crawlers are computer programs that browse the Web in a methodical manner and allow indexing of the pages by the search engine.

Format-specific search engines include SlideFinder.net, which only searches PowerPoint slides. In general search engines, you can also specify a particular format to search for by using the Advanced Search function in general search engines. File type options include Adobe PDF (.pdf), Microsoft Word (.doc), and Shockwave Flash (.swf).

Topic-specific search engines include Novoseek.com, which is a biomedical search engine. Using a topic-specific search engine will produce results narrowly specific to the topic, but it may not be where jurors look. So you may find results that are more applicable to the case at a general search engine even though the topic-specific search engine produces more informative results on the actual topic.

- A way to take notes

When you find information during your search, don't try to memorize it. You can copy important text and paste it into a program like Microsoft Word or Notepad. You can also use pencil and paper. Whatever your preference for taking notes, keep track of what you find and even where.

If you're performing an initial search into a possible juror or expert, you may want to revisit certain sites later, after the person has been assigned to the trial or as the trial draws near. If a juror updates his Facebook status or his Twitter account during the trial to say, "This sucker's going down!" you want to know about it.

The remainder of this paper is in two parts:

Part A explains how to find information about *topics and concepts* that are in or are related to the case: the science, the medicine, similar situations, comparative verdict sizes, etc. Do not limit yourself to topics the defense may bring up. You need to know what the jurors will find and use.

Part B explains how to find online information about *people*: the parties, attorneys, witnesses, jurors, and everyone else involved.

Throughout this paper are **In Practice** sections. They illustrate some of the research results for a sample case, a virtual-world research project. All of the people, businesses, and brands discussed are based on real examples, but the names have been changed.

The information and details in this article are representative samples. They do not constitute an exhaustive list of the information that was found.

In Practice:

Here are the skeleton facts of the case: Plaintiff Caleb Winters was driving his Penn Tumbler, an SUV, on an interstate in North Carolina. A Roadwell tire blew, and the Tumbler rolled over. Caleb was left with brain damage. No one else was hurt.

Winters is suing Roadwell, and Roadwell is blaming Penn.

Part A: Researching Topics of the Case

Getting Started

Research the topics and ideas critical to the case separately from researching the people involved.

Jurors will look up information on topics discussed in the courtroom. Maybe they want clarification on what they heard. Maybe they're trying to figure out who's being deceptive. You need to know what they're going to find, whether it's true or not.

Time Involved:

As with researching people, researching topics can vary in how much time is required. Sometimes you won't know how much research is necessary until you start the research.

Set aside at least 3 hours per topic, and you should be able to cover a lot of ground. You may need to do more research once those 3 hours are up, but you should have a much better idea of how much more time you need by then.

Step 1: List every topic or item relevant to the case.

Start with those items, and as you research those and continue to think about the trial, you'll start to think of additional items that could prove useful to look into. To get you started, consider:

- What materials are involved?
 - Ex. Faulty brakes that led to a car crash
- Were companies or brands involved?
 - Ex. Nike or Coca Cola
- What "Rules of the Road" are we depending on, and what is out there that could undermine our contentions about them?
 - Ex. A doctor violated a code of ethics that resulted in the patient's death.
 - Ex. A physician must do every step of a differential diagnosis.

Is there disagreement about either of these that a juror may find?

- Are there different terms or concepts that won't be familiar to the jurors?
 - Ex. The chemical aspartame
- What is the accuracy of our positions on the science or other assertions that we are making?
 - Ex. Can someone really be hurt badly in a 7 mph crash with little or no car damage?
 - Ex. Can early detection of a particular kind of cancer make any difference to long-term outcome?

In Practice:

Item 1 – Tires and tire recalls

The item most central to this case is the issue of the tires, which were blamed for the accident. The tires become the first item we want to look into.

Item 2 – Roadwell

Item 3 – Penn and Penn Tumblers

We are suing Roadwell, the tire manufacturer, and Roadwell is suing Penn, the car manufacturer. These two companies and the information they are distributing will be items to research.

Item 4 – Tire blowouts

We claim that badly designed tires caused the wreck. However, when they blew out, was there something that the driver could or should have done? We may be saying that the normal driver cannot handle a car during a blowout, but there could something online that says "every driver has to know this." As a "neutral" assertion, the online remark will most often trump your expert.

Item 5 – Closed head injury and brain damage

Due to the wreck, the plaintiff sustained a closed head injury. This has a specific medical definition that the jurors are not likely to be familiar with. When jurors look for more information, what will they find on WebMD or a less reliable place that contradicts what we will be saying in the courtroom?

We can be claiming brain damage when the plaintiff did not actually hit his head but instead received the damage via a contrecoup injury. A juror may find this site: <http://www.braininjury.com/injured.html>. Page 1 of the site talks about boxers and bowling bowls hitting people. A juror may come to the conclusion that that level of impact is necessary for brain damage and that our claims are false. The site also sounds like no one can really tell if brain damage is permanent. Jurors are unlikely to read carefully, so a site like this can fill their heads with dangerous "facts" that can sink a case.

Step 2: Go first to sites that to jurors are seemingly authoritative.

These sites include WebMD, any medical center, government agencies, professional associations, companies, and any other organizations that seem to offer authoritative information. These sites are

helpful when they agree with you but can cost you the case when they disagree or even seem to the careless reader to disagree.

If you are unsure if there are any authoritative sources, Step 3 below may help you find authoritative sources to consult.

Authoritative sites can be produced by:

A. The government

You may have already looked into the laws and regulations relevant to the case. However, what will the juror find? The information online about a case may not be up-to-date or accurate. Also, the law in one state can be radically different in another, and some Web sites do not differentiate.

If the defendant in this case has made a point to provide information online about all of the cases that they have won in the past, jurors may think that they are in the right. Roadwell could have won ten cases out of a thousand, but if those ten cases are easy to find online and the ones that Roadwell lost are almost impossible to find, you need to know that.

Consider how easily you're able to find regulations or cases and how accessible they are for the average citizen and the juror. How clear is the information you find? Is it provided in a way that the average consumer can understand?

Government information can be found on several levels:

a) Federal

If you're unsure of which agencies may have information that is relevant to your topics, enter search terms into a search engine like Google that specifies government sites.

Ex. "tire recalls" site:.gov

Indicating that you only want search results from sites that end in .gov limits the search results to just government sites. If you only want educational sites, such as those affiliated with universities, you can specify that the site address end in .edu.

You can also go to www.usa.gov to find government information. This will search a wide range of agencies and government levels, including some state sites.

In Practice:

Item 1 - Tires and tire recalls

There are several federal regulatory agencies that could provide information relevant to the case:

- The National Highway Traffic Safety Administration (<http://www.nhtsa.gov/>) provides recall information relating to vehicle and equipment at <http://www.recalls.gov/nhtsa.html>. www.recalls.gov is a site provided by the government for recalls of all consumer items, but since we are just looking for recalls relating to tires, the NHTSA section of the site is the area we need to look at right now.
- Safercar (<http://www.safercar.gov/>). The “tire recalls” area of Recalls.gov redirected us to this site, which provides consumer information for safe driving, auto ratings, and recalls, auto and tire.
- The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (<http://www.fmcsa.dot.gov/>) provides federal tire regulations, with which manufacturers must comply.

A lack of information or regulations can be just as informative as finding what you are looking for. We were unable to find information regarding the tire manufacturer’s responsibility versus the consumer’s responsibility.

Once a manufacturer sells a tire to the consumer, to what degree is the consumer responsible for the condition of the tire? If the consumer does not keep tire pressure at exactly the levels *recommended* by the tire manufacturer, is it the consumer’s fault if the tire blows out? Make sure you’re fighting only with the defense and not the internet.

Some of these questions will be answered, or attempted to be answered, during the course of the trial. However, consider how the juror will view these regulations or a lack of regulation as well as how difficult any regulatory information is to find or how easily it is misunderstood when jurors find it online.

Item 2 - Roadwell

Federal information about Roadwell is primarily limited to recall information. However, since the federal government does not clarify the relationship between the manufacturer and the consumer, this alerts us to look for what information the manufacturers, Roadwell and Penn, may be distributing that makes claims about the manufacturer-consumer relationship. Specifically, does Roadwell claim that responsibility passes to the consumer when items are purchased? Since there isn’t government information to contradict claims like that, jurors may find the manufacturer’s claims and assume that the manufacturer has the right to pass on that responsibility – regardless of the law in your venue. This is something that needs further investigation.

Item 4 - Tire blowouts

In addition to providing information about tires, The National Highway Traffic Safety Administration (<http://www.nhtsa.gov/>) provides information on its site about research the agency has done into tire blowouts and car accidents.

Documents throughout the site mention that underinflation is often the cause behind a tire blowout. The site is not so clear on exactly how underinflated a tire has to be before a blowout becomes a real risk. If the difference in tire pressure is only slightly different from the manufacturer's recommendation, does that push the blame for the blowout onto the driver? Finding this indicates that we should search for what Roadwell has to say about responsibility for tire blowouts and underinflated tires.

One document on the NHTSA site states that while tire blowouts account for about 0.1% of crashes, the tire blowouts are generally caused by faulty tires. Severe underinflation of the tires could potential cause problems. The emphasis on *severe* in the text of this document may help undermine the defense's potential argument that the crash was the result of underinflated tires, but if Roadwell claims that severe underinflation is within range of what the tires on the Penn were at the time of the crash, jurors may find that the fault was on the plaintiff, not the manufacturer. This is another item for which we need to find out what Roadwell has claimed.

The NHTSA does have recommendations for how to handle a vehicle if a tire blows out, and the Safercar site (<http://www.safercar.gov/>) also has instructions for how to safely maneuver the car if a tire blows out. The mere presence of such instructions can put more responsibility on your client ("she should have known") than you anticipate.

If the tire blew and the plaintiff had a few seconds to react before the vehicle rolled over, jurors may think he was responsible for the accident. People tend to think that they could have handled a situation better, so if the plaintiff did not take an action that he should have, like by following the recommendations on <http://www.safercar.gov/>, jurors may think to themselves that they would have known what to do and so would have handled the situation better, resulting in a less damaging wreck. If they come to that conclusion, you may have just lost the case. Even if you win, the verdict will be far smaller.

Item 5 - Closed head injury and brain damage

The National Library of Medicine and the National Institute of Health are two excellent medical authorities. They provide resources that will be very beneficial for this case:

- MedlinePlus (<http://medlineplus.gov/>) provides medical information in easy-to-understand language. It is intended for use by non-scientists and so may be one of the resources that jurors turn to most during this trial to learn more about the issues being discussed.

In an article on types of head injury, the article says this about an open head injury, "This usually happens when you move at high speed, such as going through the windshield during a car accident." Since the article mentions a car accident for open head injuries but not for closed head injuries, jurors may come to the conclusion that only open-head injuries can happen during a car wreck.

- The National Institute of Neurological Disorders and Stroke (<http://www.ninds.nih.gov/>) provides in-depth information that is more scientific in its language than MedlinePlus. This site provides information that is particularly useful for detailing what kind of long-term effects could result from a brain injury, including Alzheimer's. This can help you, but it can also hurt you if you have not mentioned them in trial: jurors might think you don't know things you ought to.

The MedlinePlus article on traumatic brain injuries links to an article available from the National Institute of Neurological Disorders and Stroke. This article is on traumatic brain injuries and may mislead some jurors: "Traumatic Brain Injury: Hope through Research." The title makes it seem as though the organization had found a way to alleviate the problems associated with traumatic brain injuries like the closed head injury in this case. The article itself describes research that is being done but does not allude to brain injury damage being curable. The article actually has an excellent section on the long-term effects of such an injury. If jurors look here for information, though, will they take the much more positive perspective of the title of the article, or will they read for more information and find the more sobering details?

There have been many popular literature articles in sources like *Reader's Digest* that spread misinformation about how the damaged brain can "compensate" in ways that restore normal functions. This common misconception is a real danger that attorneys must deal with in trial.

- PubMed (www.pubmed.gov) is a service of the National Library of Medicine and the National Institute of Health. This database contains scientific literature that may be too technical for most members of the public to understand. Since it is a medical resource that is easy to find when searching online, though, we looked at what was available that a juror might find and "understand." For example, using an MRI has been found to be more sensitive than performing a CT scan for detecting abnormalities resulting from closed head injuries. If the plaintiff underwent a CT scan instead of an MRI, maybe the assessment of the brain damage isn't right. So if you've said that your client's brain injury does not show on imaging but you have done only a CT scan, the juror may think you avoided doing an MRI or more advanced scan out of fear that there's still be no visible damage.

b) State

Some states have more information online than others.

In Practice:**Item 1 - Tires and tire recalls and Item 3 – Penn and Penn Tumblers**

Penn did recall parts from the Penn Tumbler that is involved in this case. If the defense tries to say that the wreck was caused by that defect and not by the tires, we have the information necessary to defend against that claim since the plaintiff had the defective parts fixed prior to the accident. If you did not know about the recall, you would not think to make this important point, because it is relevant only to someone who knows about the recall – i.e. the juror and not you.

Item 2 - Roadwell and Item 3 - Penn and Penn Tumblers

Government searches for Roadwell and Penn allow us to locate court documents and news reports related to other cases in which the companies were involved. How will jurors regard them? There are a lot of court cases for these companies. If the plaintiff knew about these previous court cases and bought the products despite the warnings about them, doesn't he share some responsibility for the accident? "We all know these things roll over, so"

Both Roadwell and Penn are also involved with the national parks. Roadwell donated 10,000 acres to the state of Tennessee for a wilderness preserve. Are there any jurors from Tennessee or particularly fond of hiking? A large gift like this may make people more likely to believe that a company did not intend harm with the tires it produced. "If Roadwell made such a generous donation to Tennessee, surely Roadwell cares about the community, is a good corporate citizen, and didn't mean to do anything wrong." You can deal with this, but only if you know about it.

Are there jurors who have a fondness for these companies because of the donations that they have made? These donations may be more problematic if the case was taking place in Michigan, Pennsylvania, or Tennessee, where these companies have made significant contributions. Still, North Carolina citizens who may be jurors in this case may still be influenced by the companies even if no significant contribution was made locally. When researching potential jurors, look for any who are from or spent significant time in the states where Roadwell and Penn are most visible in the communities. You can find out in jury voir dire; when you find one, ask them about their view of the company as a corporate citizen: Good? Bad?

Item 5 - Closed head injury and brain damage

The Brain Injury Association of America (BIAA) has chapters in 40 states, including North Carolina, the location of the trial. Though not a government association itself, BIAA works with government agencies and commercial entities. The organization can provide services for individuals who have had a brain injury. It also advocates for brain injury victims.

If your medical expert belongs to the BIAA, jurors will perceive him as in league with that side, not a neutral expert. It is not a trial-neutral group, which can be problematic.

One of the sponsors of the Brain Injury Association of North Carolina (BIANC) is the legal firm that the plaintiff's counsel works for. Because of this sponsorship, the defense may claim that information presented by the plaintiff is tainted. To prevent this, any information we find through the Brain Injury Association should be confirmed through additional, authoritative sources.

c) Local

Local government sites vary highly in what's available online. Urban areas tend to have more information online than more rural areas. If you're working with a more rural audience, check out resources provided by nearby urban areas that may supplement local information.

The information found on local sites will highlight news that is important to that community in addition to providing local news stories that are not available on larger, more national sites. If a local news site features national reports about the recession and other stories about local layoffs, the community is hurting and may be influenced if the defendant provides many of the local jobs.

In Practice:

Item 5 - Closed head injury and brain damage

By searching local news sources, we found that two teenagers recently sustained severe brain damage after a bicycle accident. Duke University and local churches were part of a local effort to help the families of the boys pay the medical bills. News coverage of the boys' recovery notes that though the brain damage was significant, there does appear to be healing of the brain. This may lead to the belief by some jurors that the plaintiff may heal from his brain injury.

The UNC School of Medicine and the Duke School of Medicine have a lot of information available on brain injuries. However, while anyone can search the school's Web site and find relevant documents, access to the documents is restricted to individuals affiliated with the schools. People could go to the medical library at either school for information since such libraries often allow members of the public to use the library collection. This would require that the individual physically travel to the library. The information gathered from the libraries is less likely to be biased or false.

Though the libraries are available to the public, most people will not find it convenient to travel to the libraries for research. Instead, they are likely to rely on information publicly available online, which can be very difficult to distinguish as being authoritative or misleading.

B. Associations and professional organizations

These can include professional organizations that license individuals, like medical boards, or just groups that advocate within a field for particular standards and practices.

In Practice:

Item 3 - Penn and Penn Tumblers

The United Auto Workers is a union that has members working for Penn. Most of the information on the Union's site relates to their financial negotiations for Penn workers.

The United Auto Workers and Penn joined forces for an interesting maneuver. They formed a National Joint Committee on Health and Safety, which provided money to researchers to perform certain kinds of research and to report the results. Several of the researchers involved in this venture have a well-documented history of receiving money from companies without disclosing that information before publishing the results of the research. When a researcher takes money from oil, tobacco, and auto companies to do research that shows that workers at those companies, or consumers of those products, are not being harmed by exposure to the products, the research is likely biased and not in the best interest of the public.

Are any of the researchers involved in those studies also serving as experts in this case? Actually, yes, one of the defense's experts is a part of this. Linking that expert to this series of studies and showing how the studies were misleading will undermine his credibility.

This is the kind of information the plaintiff in our case can use to demonstrate a history of intentional harm. It also helps to show that the evidence the defense provides is flawed because companies influenced researchers to report particular kinds of results.

If jurors find these studies, and our legal team does not reveal that the studies were performed with a particular agenda in mind, jurors may come to the conclusion that the company operated in the interests of the workers by having the studies done and that if health problems arose later, the company is not responsible since it set policies in light of sound scientific research.

Item 4 – Tire blowouts

The Tire Industry Association produces guidance on tire manufacturing. The group published *Passenger and Light Truck Tire Conditions Manual* (2005), which would help consumers gain knowledge about how to maintain tires and discusses issues like how to handle a tire blowout. However, the manual is not provided online or for free. The manual costs close to \$300 and is out-of-range for most consumers. While this manual does provide information on standards for the tire industry, it is not reasonable for consumers to be expected to have access to this information, which means that consumers are not expected to obey any "standard" way to handle a tire blowout described in this manual.

Item 5 – Closed head injury and brain damage

There is a Brain Injury Association with a branch in North Carolina. The site for the North Carolina branch provide information on brain injuries, resources

for additional information, links to government information, and even provides a free online course to help service providers in North Carolina provide services to those with brain injuries.

This is the kind of site that we want jurors to go to. If you mention it in trial for some legitimate purpose, such as by asking in voir dire if a prospective juror has been to that site, jurors may go there. It is, of course, unethical to motivate jurors to go there. But if you have a legitimate reason for asking the question you should be on safe ground. It is legitimate to probe into what jurors know and where they have looked.

C. Companies responsible for the product or service.

In Practice:

Item 1 - Tires and tire recalls and Item 2 - Roadwell

The Roadwell Web site provides information about Roadwell products. The SB380 tire that was on the plaintiff's Penn Tumbler was recalled in 2008, but the Roadwell Web site still says, "Whatever the season, whatever the road surface, count on the SB380 to deliver performance on demand." There is no recall notice on the page with the item description. Is this negligent of the company?

There is recall information on other pages in the site, but they are more difficult to find. Can a consumer be reasonably expected to be aware of the recall if there is no notice on the item description page?

If the defense argues that the plaintiff should have known about the recall and taken appropriate actions, we need to demonstrate how difficult this information was to find. We also need to find what other ways Roadwell may have distributed recall information, such as through a mailing list to consumers who signed up voluntarily or were automatically enrolled when the product was purchased.

Item 3 – Penn and Penn Tumblers

Penn has a Web site that provides information about the company and its products. Included on the site is information for owners of the vehicles. There is some recall information provided if the user enters the VIN of the vehicle. There is also an owner's guide for each vehicle, and in the guide for the Penn Tumbler, there is a very large warning that utility vehicles like the Penn Tumbler are more susceptible to rollovers than other vehicles.

Penn will want to argue that consumer information like this moves the responsibility for the wreck from Roadwell to the consumer. On the other hand, it allows Roadwell to imply that Penn, rather than Roadwell, was responsible because Penn's vehicle rolled over easily. These are common dynamics in such trials, so you want to make sure what jurors have found online instead of hearing in court.

- D. Sites that jurors may think are authoritative, whether actually they are or not.

These can include medical resources that are sponsored by drug companies or other sites that appear to provide legitimate information but have some kind of bias or ulterior motive – or that are just based on ignorance.

In Practice:

Item 5 – Closed head injury and brain damage

WebMD (www.webmd.com) is a commercial site with its own agenda, but many people go to this site before going anywhere else for medical information. The information can be faulty, and the article on concussions is a bit troubling. Though a closed brain injury is different from a concussion, the article on concussions was one of the top results when we searched the site for closed head injuries, so it is one of the first articles that a juror may access. The article specifically states that concussions do not include injuries where there is bleeding under the skull or into the brain. This contrasts with an entry by the MayoClinic, which specifically discussing bleeding around the brain. The site's article on traumatic brain injuries is more in line with information from other medical sites. Confusion on any medical topic is more likely to help the defense than the plaintiff, so with contradictory information out there, you have some clarifying to do.

The Mayo Clinic (www.mayoclinic.com) is a not-for-profit organization, and the Web site is another popular source of medical information. In addition to providing information online, the Mayo Clinic provides medical services at several locations in the U.S. The Mayo Clinic is one of the resources that MedlinePlus refers users to, so the referrals from MedlinePlus have the government's seal of approval, which WebMD does not.

Jurors may not be able to tell the difference between a Web site with more accurate information, like the Mayo Clinic, and one with the potential for less accurate information, like WebMD. Finding the differences now, before the trial starts and jurors find this information, will prepare you to defend against the inaccuracies that jurors find.

Step 3: For each item, conduct a broad search.

As with the initial search for individuals, begin with a broad search and catch any large information pieces. You don't have to conduct a search for each individual item you noted in Step 1, but keep those items in mind as you start to formulate your searches. You may need to search for synonyms of those items, broaden or narrow the search topic, or even combine multiple items within the same search.

In Practice:

Searching for "tires" would result in too large a search. Instead, we did an initial search for "Roadwell Penn Tumbler tire recalls." This combined the concepts of Roadwell, Penn, and tire recalls. Be flexible in how you search. Combining concepts may lead to the discovery of previous incidents or items that are relevant to your current case.

As you search each item, keep these questions in mind:

A. What and how much information is available?

If a company ceased production on a sewing machine, have they removed the user's manual from the Web site, or are they still supporting customers who bought the machine before production ceased?

In Practice:

Item 1 - Tires and tire recalls

We found news and documents relating to the large series of recalls and suits in 2000 over Roadwell tires on Penn automobiles. The legal team has hopefully already examined these documents, but such documents are also easy for jurors to find. If Roadwell and Penn have publicized the cases that they won while the ones they lost are more difficult to find, it may appear to jurors that the companies won a majority of the cases. Even if that isn't true, it could influence jurors for this case.

When researching, we need to pay attention not just to the cases that we found but to how they are portrayed, whether they are continuing, if people are still paying attention to the trials, and what kinds of comments people posted to the Web sites about the 2000 cases. The comments around the time of the cases were very angry, but there has been very little since the cases were resolved. If they were so easily forgotten, jurors may have forgotten as well. Be alert throughout the trial for doors the companies open to letting this information in.

B. Who or what is providing the information and why?

Be alert for intentions, biases, and attempts to deceive or persuade. Even without the intention to deceive, information may be incorrect or skewed.

This is *extremely* important. If you're trying to prove that a drug company knew a drug was not safe, there may be claims being distributed from apparently neutral sources that the drug is safe. The pharmaceutical company may be behind the dissemination of the information, paying researchers to report favorable assessments, and don't think insurance companies are above such shenanigans.

In Practice:

Item 1 - Tires and tire recalls and Item 2 - Roadwell

Sadly, one of the main sites that posted information about the 2000 recalls seems to have been created by a 'McLitigator' group, a group of attorneys hoping to take advantage of the publicity about the danger of the recalled tires from a particular company, Roadwell. By creating a Web site that tracked and publicized the coverage of recalled tires from this company, they encouraged people who had Penn cars and/or Roadwell tires to come hire them. If you're not one of these firms, let the jurors know in jury selection.

Item 1 - Tires and tire recalls and Item 4 - Tire blowouts

Other sites provide information on blowouts, how to avoid them, and how to handle them when they occur. Some of these sites are provided by plaintiff's teams. The way they present information here is sometimes badly disguised as providing safety information. Jurors are not stupid; they may see sites like this as attempts by plaintiff's lawyers to troll for cases.

Item 2 - Roadwell

The warranty information for Roadwell tires includes information on how to handle a tire blowout, which the plaintiff was unable to use.

The warranty assumes that when the tires reach the consumer, the consumer is entirely responsible for their condition. The consumer must "properly maintain" the tires according to the inflation levels stated in the warranty. If he does not, the consumer is responsible in the event of a tire blowout. There is no range of recommended inflation levels but rather a set amount. This means that the slightest variation can result in a claim that the consumer did not "properly maintain" the tires.

The defense can use the well-documented warnings and warranty instructions to argue that the poor tire maintenance moved the responsibility for the accident from Roadwell to the plaintiff. In many situations, this kind of information shows up only online. You need to know it's there in order to know you have to counter it. Did the company provide the information to protect the consumer or the company?

Item 5 - Closed head injury and brain damage

One of the first search results in a broad search for "closed head injury" is a site sponsored by a plaintiff's legal team. The site seems to be providing medical information, but since it is sponsored by legal firms, the information may appear to be biased. The site also provides information on how to take legal action, so jurors may think that plaintiff's attorneys – like you – are out to take advantage of other people's misfortunes. If you try to use the information on these sites in court, jurors may see the information as biased and therefore wrong. A legal group can put anything on its Web site but have no credibility behind the claims. Anything you find on sites like this, confirm elsewhere from a credible source or risk jurors rejecting it.

Step 4: Narrow the search by following leads discovered during the broader search in Step 2.**In Practice:****Item 1 - Tires and tire recalls and Item 2 - Roadwell**

After finding that there had been a series of cases relating to Roadwell tires in 2000, we looked for continued coverage and recalls. We found that the tire on the plaintiff's car had been recalled and that there have been several suits over the tires. Though the recalls are posted on official recall sites, they are not covered in Web sites that consumers often frequent like CNN.com or local news sites. The consumer would have to go to a site that focuses on recall information, which is far outside the range of daily activities for the average consumer. If we can show how difficult it was to find such recall information, we can make jurors realize how unreasonable it is to expect the plaintiff to have been aware that an issue even existed. And,

you can show how easy it would have been for the company to have gotten that information out.

Although the recall Web sites are out of way for the average consumer, the customer could sign up for a service at the point of sale that would notify him or her of any recalls. We cannot find online whether a particular individual signed up for this service, but if the defense can show that the plaintiff was offered the opportunity to sign up and refused to do so, it may be very unfavorable for us. Once you know this, you know enough to get your client to explain that he never knew about it. If you don't know about it, in deliberations a juror who found it online will say, "He was supposed to sign up" Etc.

Step 5: Search popular sites that jurors will go to.

Jurors won't just be going to authoritative sites. Many popular sites have dubious information, but since these are places where jurors will get information, you need to know what's on those sites.

While searching, keep in mind that it isn't just news or other information that you find that could be important to the case. The comments that users post to articles can give you information about how people feel about the topic.

A. News sites

- National or worldwide news sources
 - Ex. CNN.com or BBC.com
- Local or regional news sources
 - Ex. Local paper or television station's Web site

Be alert to differences in how items are reported on a more nationwide scale and on the local level. News sources and editorials in San Francisco will have very different tones when discussing gay marriage than in a conservative community in the South. For example, a conservative community may focus on how much controversy there is about the issue and include quotes from local religious leaders who are against gay marriage. A more liberal community may have less of a religious focus and highlight pending legislation and the efforts of local organizations that support gay marriage rights.

In Practice:

Item 1 - Tires and tire recalls

When we searched news sources for the Raleigh/Durham area in North Carolina, where this case will take place, one of the first results was about how a recent series of recalls would mean layoffs at a local plant. Safety may be very important to each individual, but financial security should also be kept in mind when working with members of this community. A juror may side with the defense not because he doesn't believe that the plaintiff was wronged but because his community would be hurt more by a multi-million-dollar verdict against the company.

Checking at the comments to these stories will provide insight into the community's reaction to these events. In this case, other companies were also

having layoff, but since Penn had been in the community so long, many people felt an emotional connection not felt for other companies.

Item 3 - Penn and Penn Tumblers

Penn has been in the news a lot in the past couple of years since the company turned to the government for financial assistance during the economic recession. The chief executive officer of Penn flew in a private plane to Washington, DC, to ask for government bailout money in November 2008. The company received a lot of bad publicity at that time that jurors will likely still remember. The news stories are also still in the top results when searching for company information. If the juror had forgotten about that bad publicity, it will be easy to be reminded if the juror searches online.

B. Social networking sites like Facebook, Myspace, and YouTube

In Practice:

Item 5 - Closed head injury and brain damage

There are many videos on YouTube relating to brain injuries. Many are medical in nature, and some have specific audiences like attorneys or people without a medical background. Some of the videos provide false information, like how brain damage isn't permanent and the patient can improve by "being positive." You need to know exactly what these videos say so you can counter it, when necessary, in trial.

C. Search engines like Google

In Practice:

Item 2 – Roadwell and Item 3 - Penn and Penn Tumblers

When we examine the Wikipedia article on Roadwell, we find something very interesting. Despite the series of recalls that occurred around 2000, there is no mention of it on the Wikipedia page. The article contains absolutely no information about any recalls. In fact, it's written like an ad for the company and doesn't contain negative information by the company, links to court cases, or negative consumer reports.

There is an article in Wikipedia for 'Roadwell and Granger tire controversy.' Granger is a small tire maker that Roadwell owned during the recalls. Even though Roadwell was the parent company during the recalls, Roadwell's name is scarce in the article. By playing up the controversy and shifting blame from Roadwell to Granger, Roadwell maintains an untainted name, even though the two were part of the same company.

Item 5 – Closed head injury and brain damage

When searching for information on closed head injuries, we find an article on head injuries on Wikipedia. This article is really troubling and could lead to misconceptions by the jurors. It states that if someone sustains a brain injury and does not have an abnormality of the brain already, that person should fully recover.

The only long-term effect listed is, “persons who sustain head trauma resulting in unconsciousness for an hour or more have twice the risk of developing Alzheimer's disease later in life.” You need to assume that jurors will read and believe this article.

The Wikipedia article ‘traumatic brain injury’ is more informative, but the language in that article is more difficult to understand because of so many medical terms. That makes the article mentioned just above far more dangerous to you.

D. Blogs, community forums and other areas where people post comments

In Practice:

Item 2 - Roadwell and Item 3 - Penn and Penn Tumblers

The Facebook profiles for Penn and Roadwell present another reason to research potential jurors before the case begins. Each company has several Facebook profiles, and there are hundreds of fans of each company and their vehicles. By maintaining a positive social presence online, Penn and Roadwell may be wooing a certain part of the population, a part of the population that could be on the jury. Don't let them on yours.

E. Local government Web sites

You may have already found this kind of information in Step 2, but use this as an opportunity to make sure you searched these sites well. Here, you're not necessarily looking for government ordinances or regulations. Look for news, events, or other kinds of information that would be updated regularly.

Some local governments will email information to people if they sign up for updates via an RSS feed. If you take on a trial, you may consider signing up for the RSS feed from the local government site. Many sites will have an option on the main page to subscribe to email notifications or RSS feeds.

Step 6: Search location-specific resources.

Some sites and information are only available because of where people live. Don't miss these if you're researching from another state than where potential jurors are. These sites contain more of the kinds of information discussed above, and given who sponsors these kinds of sites, the information can seem far more credible than on other sites – making it all the more important that you know about it. In other words, it's not just a matter of what jurors find but where they find it.

Location-specific resources include:

A. Libraries

This is one of the most important location-specific resources. Public libraries often have online catalogs that people can search, regardless of whether the individual has access

to the library itself. By searching the catalog, you can get an idea of whether the library has print resources that would be useful to jurors during the trial.

Libraries usually have restricted access to electronic resources due to licensing agreements with the providers of the resources. If you have a library card, you can access the resources. If you do not have a library card, you may not be able to see all of the resources, but by searching the library's Web site and even calling the library for more information, you can get some idea of what is available to people in the area. The library can often provide a wealth of information, so do not discount its importance.

In Practice:

This case takes place in North Carolina; the accident occurred in North Carolina, and jurors will be residents of the state. We need to know what resources are available to North Carolina residents that would not be available to other people. In addition to checking publicly available resources like CNN.com, people may access these location-specific resources, which can often provide more information than what is publicly available. Instead of having to view only a few free news stories from *The Wall Street Journal*, for instance, residents may have access to the complete archives through subscriptions through local sources, not by paying for it directly themselves.

North Carolina residents can access NCLive, a set of electronic databases including access to *The Wall Street Journal* and other newspapers, encyclopedias, and databases. Access to NCLive is provided by the state library system, and all residents with a library card to a public library in the state can access NCLive.

Item 1 - Tires and tire recalls and Item 2 - Roadwell

NCLive has many news stories about Roadwell tire recalls. This sets the stage for Roadwell having known about defects but continuing to ignore them, which endangers the public and makes each juror aware that this company is looking out for itself at the expense of the people. NCLive also has stories that detail how the Tumbler vehicle in particular is known for having trouble with its tires and that a few years ago Roadwell temporarily cut its ties with Penn because of the recalls and suits that were occurring.

If the trial was taking place in another state, jurors may not be able to access this information. Not all states provide services like NCLive, and where services are available, the resources are different. Just like the resource collections available at universities, the items selected for inclusion differ drastically from one campus to another.

Item 5 – Closed head injury and brain damage

While conducting a search of *The Wall Street Journal*, which is available through NCLive, we find a news article that reports that researchers are increasingly finding decreased functioning due to brain injuries that did not show up when the person was injured. This will help fight a common defense argument (and juror conclusion) that since there was no sign of brain damage right away, there could be none now. Now that you've found the article, you

can run it by your expert – who in turn might be able to make use of it – and its sources – in trial.

While conducting a Google search may find this or similar articles, access to NCLive ensures that the user has access to the full-text of the article. The full article is not always available when conducting a search in Google or other free sites.

B. Historical societies or collections

These may be found on Chamber of Commerce Web sites or can be listed on the local library's site.

C. Museums

These, too, can often be found on the Web site for the Chamber of Commerce, but they can also be found by searching Google and specifying the geographic location.

In addition to exhibits within the museum, there may be online exhibits and an in-house library or archives.

In Practice:

Item 3 - Penn and Penn Tumblers

Thankfully, this case is not taking place in Michigan, where Penn is stationed. The George Penn Museum in Michigan is one way for the Penn company to encourage a positive image as an All-American company that has the public good at heart. You need to find and study Penn's public face online so you can recognize its elements during jury-selection answers.

D. Public colleges and universities

Like local public libraries, colleges and universities can provide a wealth of resources to the local population. If the college or university is public, any citizen of the state can use its resources in the libraries. Due to licensing restrictions, only people affiliated with the university can access electronic resources off-campus, so jurors would need to physically go to the library in order to access electronic resources. Even on campus, some electronic resources are restricted to people within particular departments.

Search the library catalog to see what is available even if you cannot access the item itself. The catalog record can provide information about the resource.

Also, libraries at universities often have more financial resources than local public libraries, so they may also have online exhibits available as part of their public service initiatives. The Southern Historical Collection at a local university contains transcripts of hearings and other documents about Roadwell. Many of the documents can only be accessed by going to the library on campus, but some items are available online.

If you search these sites from your own computer, do not think that access is blocked to jurors just because you can't gain access. Public universities have a mission to serve the public, not just students, so public computers are provided on campus for members of the public to use, and many non-student jurors will have access from off-campus because they are affiliated with the university.

In Practice:**Item 5 – Closed head injury and brain damage**

A search of the library catalog for the University of North Carolina at Chapel Hill led us to resources from the Rancho Los Amigos Medical Center, one of the most prominent centers for rehabilitation. The center published information on brain damage (http://www.rancho.org/patient_education/bi.pdf) that would be very useful to jurors and easy to understand. That clarity, plus the dual endorsement of the very credible center and the equally credible university, can give this information extraordinary weight with jurors. If it conflicts with what you're offering you can be in trouble. Many jurors will give credence to virtually anything listed in a university library's catalogue, mistakenly thinking that university libraries screen for truth. This is one reason jurors go to such catalogues in the first place. Ignore what they can find at your peril.

Step 7: Pursue topic-specific resources.

Ultimately, the question is this: "What topics are jurors likely to research for themselves? At the top of the list are the most in-dispute topics in trial, such as the medicine, the science, statistics, and the technology. But you'll never guess them all. This leads to what has now become one of the most important reasons for doing focus groups.

When you do a focus group, allow the focus-jurors plenty of opportunity to ask what more they'd like to know. You can be pretty sure that your real jurors will want to know the same things, many of which you will not have anticipated. So you'll know what they're likely to research online. You need to get there first.

Part B: Researching Individuals**Getting Started**

In general, topics are harder to research than people because there is no clear-cut, concise list of topic resources, but you can look up your name and anyone else's using pretty much the same resources.

Do not research individuals and topics at once. Separating them reduces the chance that you will be sidetracked.

The steps below show you how to get as much people-information as possible in the shortest possible time.

In Practice:

More about the case: Research the medical and tire experts.

When searching for this information, if you find a great page on the topic of brain damage, don't go there now. Make a note of it for later; don't do both at the same time. Even the best of researchers misses important information when trying to research both people and topics at once.

Remember: We are not looking for information that will be apparent during the trial. We are mainly seeking **intrusive information**, true or false, that can hurt us. We're also looking for useful information that the defense has withheld or that they are not aware of, such as how the defense engineer has lost his license in another state.

When time is limited, do at least a quick search of your own experts for any online traps such as someone slamming your medical expert on Craigslist (www.craigslist.org) or a site like RateMDs (www.ratemds.com).

Step 1: List individuals critical to the case.

Make sure you know who is important to the case so that you know who you need to research. When you know how much work you have ahead of you, you have a finish line to work towards.

You may find it is easier to research in groups or simply go person by person.

In Practice:

The people we need to research for this case:

Plaintiff's side

- Plaintiff – Caleb Winters
- Plaintiff's lead counsel – Bob Jones
- Plaintiff's co-counsel – Sam Waters
- Plaintiff's first brain damage expert– Daphne Cash
- Plaintiff's second brain damage expert– James Wagner
- Plaintiff's tire expert – Cameron Frank

Defense's side (Roadwell)

- Defense attorney – Frank Garron
- Defense's brain damage expert– Larry Kane
- Defense's tire expert – Matt Nisco

It is often easier to research people in a similar grouping – such as medical experts -- one after another since many of the resources are specific to particular groups. So we do all of the research for medical experts before moving on to the tire experts, for whom we check a different set of resources.

This strategy may not work for you, but you may want to try it, especially until you become familiar with how to do this kind of research.

Step 2: See if the individual has a personal or business Web site.

You can usually find these sites by searching for the person's name and geographic location.

Ex. Frank Garron Raleigh

Information found on these sites is provided by that individual, so it has his or her seal of approval. This doesn't mean that the information reflects well on the individual. There can be some pretty embarrassing – and harmful – information on the site.

The statements on the site and how the site looks can make an impression on jurors. It can also give you ideas of what additional searches to perform.

In Practice:**Plaintiff's first brain damage expert – Daphne Cash**

Oh, goodness. The plaintiff's brain damage expert, Daphne Cash, has a Web site that is positively flamboyant. It's bright pink, like a certain medicine, and there's a lot of flash and sparkle.

Daphne is a TV personality, a celebrity psychiatrist, so the flamboyance makes some sense. She is likely to be recognized by the jurors since she has appeared on television shows and has written popular books.

You've almost certainly seen her site before doing this research, and you know what she's like; otherwise, you wouldn't have hired her. Take a second look, though, with fresh eyes. A woman like this might be brilliant on the stand, but what will the jurors think when they see a site like this? Will they be prejudiced against her before she even gets the chance to speak?

Even if you've worked with Daphne before and researched her then, research her for this case. Daphne makes a lot of television appearances and public comments, so you need to make sure that nothing embarrassing has appeared since the last time you researched her. For example, Daphne recently made public demeaning comments about a woman who gave birth to multiple babies: "Only animals have litters."

This kind of problem should show you the wisdom of researching each potential expert before signing her up.

Plaintiff's second brain damage expert – James Wagner

Again, you've probably already seen this site and know something about James Wagner. However, take a second look, and try to think about how a juror would see this site. If there are no inappropriate comments on the site, what else does the site tell the juror about this guy's credentials? Wagner's site makes a positive impression on people trying to figure out if he really knows what he's talking about. While Daphne's site portrays a dramatic personality, his site is entirely professional.

Business and personal Web sites, like LinkedIn and Facebook, may have links to the expert's publications or items that he recommends. When they are relevant to the case, you need to find out what the documents say. You don't need to read everything the person has written, but review everything to be sure there are no landmines. (For more information on publications, see Step 9: Miscellaneous, C Publications.)

In Practice:**Plaintiff's second brain damage expert witness – James Wagner**

Research every potential witness. Research every expert before committing to having him in the case. Some of the online information about James Wagner could destroy his credibility, so if we find the information before signing him on, we can make a more informed decision about whether to take on that risk.

James Wagner posted on his Web site some of the articles that he has written. In one, he states that his teacher and mentor was prominent psychiatrist Richard Walker. Not being familiar with this individual, we looked up Walker and found that he had been an expert witness during a rather famous trial. Walker had helped to defend a man who murdered a member of one of America's most prominent political families.

Some jurors could turn against Wagner for this. If the mentor he brags about was willing to testify on the behalf of an "obviously" guilty man, might Wagner be just as "misleading" for money? This is especially dangerous when there are seemingly credible online comments about the defense having hired "liars" to get their client off.

If these items had been found after Wagner had been signed to the case, all we could do is defend against it. If we find the information and still decide to sign him to the case, we can prepare for what jurors may find. We might even be able to remove any damaging items before jurors have the chance to find them. Since Wagner had posted this comment on his own Web site, he can probably remove the comment before we sign him to the case.

Step 3: Do a broad search in a search engine for the individual's name to see what is immediately visible about that person.

For example, enter into the search engine Google (with the quotation marks): "James Wagner"

Performing the search with the quotation marks searches for the phrase exactly as it is entered. Such a search will not find results with a middle initial (James I. Wagner) or a nickname (James "Jimmy" Wagner.)

Repeat the search without the quotations to see any results that might include a middle initial, which the search with quotations would not have caught.

Then search with a full middle name.

You may consider adding additional terms to help narrow the results to the individual that you're looking for, such as by including the state in which the person works. Keep in mind, though, that the jurors may not think to do that initially. So if you start that way, you might miss things that the juror's more general search would have found.

In Practice:**Plaintiff's second brain damage expert – James Wagner**

When we were searching for James Wagner without quotations, we also found results on his son. Finding information on family members can be useful. James Jr. works for an animal wellness company. This company does not handle human medical issues or do brain imaging work for animals. If it had, however, James Senior may be seen as having a vested interest in

giving testimony that would help his son. We're safe this time, but the next case may not be so safe from such conflicts.

If we think that jurors could be confused between James Senior and James Junior, we could bring up the difference in court. If James Junior can edit the online profile, which some companies do not allow on the company Web site, we could insert information to clarify that James Senior is an expert in the field, not James Junior.

- A. Watch for people with the same name as the individual you're searching for.

Jurors may mistake the individual involved with the trial with one of these false hits, so be alert for them.

In Practice:

Plaintiff's lead counsel – Bob Jones

Although there is a lot of information available about Bob Jones online, his name is so common that a multitude of the wrong Bob Jones's hide a lot of true hits for the Bob Jones in your case. Adding geographic information or other relevant terms to the search help narrow the results to the Bob Jones we're looking for.

Ex. Bob Jones North Carolina

Ex. Bob Jones (attorney OR law)

Bob seems to be an upstanding citizen, and the false hits that turn up in a broad search like this are thankfully not problematic for the case. The false hits are for a Presbyterian minister from the 19th century and for a famous musician. There are others, like an artist, but these account for the bulk of the results. If the false results were mainly associated with people like serial rapists or dirty politicians, there could be problems.

There are potential problems to be aware of: When we enter the attorney's name into Google, the first result is for a law firm, but not the law firm that our Bob Jones works for. There is also a listing of an attorney named Bob Jones who was disbarred for stealing client's money. You'd obviously want to assure jurors it's not you, but you would not know you had to if you didn't know this information was easily available.

- B. Watch for biases or conflicts of interest.

These could be biases that the individual already seems to have, or they could be outside factors that could seem to affect his truthfulness on the stand.

In Practice:

Roadwell's tire expert – Matt Nisco

Matt Nisco has reason to favor Penn. He has worked for several tire companies, including Penn. He served on a task force set up by Penn to examine what health risks workers may have while working in the company's factories. Although the United Auto Workers were a part of that study, the conclusions of the research were heavily in favor of Penn, who paid for the research. That can undermine Nisco's credibility. So don't rely on a juror finding it; elicit it yourself in trial.

Step 4: Search for financial information.

It can be useful to know a witness's unusually extravagant lifestyle. For example, the defense witness maintains a lavish home with a four-car garage, swimming pool, and huge estate that can all be viewed in Google Earth. Those pictures make it easy to impeach him when he makes his usual bogus claim of being in court for the sake of truth instead of further riches.² Try not to hire experts who can be similarly trapped. All a juror needs is the expert's home address, and she can probably find good pictures of the lavish home.

Look up the tax records for the residential addresses, which can usually be found by searching for the individual's name on the county's tax site. Not all counties have electronic records available, but many do. Accessing records that are not freely available online could require the kind of resources that only a professional researcher would have or require actions offline like making phone calls or physically going to an office. So you don't need to worry that a juror might find them.

Business tax records will not provide much information about the individual's finances unless he is an owner or, say, a shareholder in an S-Corporation. Yet it can be revealing to see where the business is or what it looks like from the satellite and street views of Google maps. While you can use Google Earth to view areas as well, you must download the Google Earth application before being able to use it, so first be sure your computer can handle it; not all of them can. The satellite view from Google maps can be accessed more quickly and it requires no downloads. Also, most addresses in Google maps can be viewed from a "street view," which shows what the address looks like if standing by or driving along the road, and this view shows more detail than the Google Earth view. You may try using both viewing applications, but since the maps view is easier to access, jurors are more likely to see them than Google Earth images.

In Practice:**Defense's brain damage expert – Larry Kane**

Larry Kane has a business address in California that appeared perfectly legit until we went to Google maps and viewed the satellite image of the area. It was in the middle of a large residential area, and there was a very large swimming pool. We searched for information on the property and found that it was zoned as a residential property. We also found that a few years ago Mr. Kane had requested that the parcel be split into two parcels, presumably so that he could sell one. The piece of property, his "office," is valued at over \$700,000 and has more than 5000 square feet. The swimming pool is listed as 800 square feet. A jury may see his listing this as his office as a very shady practice.

Kane has made a point of saying that money isn't the reason that he's a witness in cases like this and that he doesn't really know how much he's being paid for it because his secretary takes care of that little issue. However, the information about his property shows that he cares very much about money. The companies he has worked for paid very well, and his testimony helped win their cases. This may help undermine his credibility if we can show that his desire for a paycheck makes him less than honest on the stand.

² Also see p. 113, *Reptile: The 2009 Manual of the Plaintiff's Revolution*. 2009. Balloon Press.

Plaintiff's lead counsel – Bob Jones

Remember how the plaintiff's lead counsel has a really common name? Even in the county property records there is another Bob Jones. That Bob Jones isn't doing too badly, either, and he owns a boat in addition to residential property. If a juror sees entries for "Bob Jones," he could easily come to the conclusion that the plaintiff's lead counsel Bob Jones owns a residence worth \$750,000, another residence worth about \$1,200,000, and a yacht. He had none of that the day he got out of prison 12 years ago. That much wealth visible in records could be a problem even if it doesn't all belong to our guy. When you know about confusing details like this, clarify it in trial. In voir dire: "Does anyone know the Bob Jones who owns a mansion in Hilton Head?" Etc.

Plaintiff – Caleb Winters

Before you agree to take on a case, research the client. When we view Caleb Winters's house from the street view in Google maps, we see a Corvette and a Mazda sports car in the driveway. Other sources show that he's an organizer of a road-racing club. This leads to heavy suspicion that he, not the tires, caused the wreck. He may not have told you any of this before you've decided to take on the case.

Search for financial miscellaneous information.

This can include seeing what school a son or daughter is attending, contributions to community efforts, or to the university from which the individual graduated. If the person's CV or Facebook profile mentions an alma mater, try searching the school's Web site for his or her name.

Political contributions are discussed in Section 6.

In Practice:**Plaintiff's co-counsel – Sam Waters**

Sam went to law school at North Carolina Central University. He has been active with the school since his graduation and has made several financial contributions.

Defense attorney – Frank Garron

Frank went to law school at the University of North Carolina at Chapel Hill. He has made donations to the school and has served on boards there. He is quoted in one of the school's publications as stating his reason for practicing law is to "stand up for individual rights." He looks like a genuine guy to jurors who find that information.

However, when was the last time Frank "stood up for individual rights?" The information we find initially indicates that for the past few years he has been working for large companies, not individuals. We look for more information about his activity in the past few years. Although Frank has worked for some large corporations, he has also worked on smaller cases defending individuals.

Though we followed a lead and it didn't pan out in this case, sometimes it does. Check every credential carefully. The most frequently faked credentials tend to be the early ones: degrees not finished or an article improperly claimed. People tend to forget to remove their old lies later in their careers when they no longer need them.

Step 5: Search for criminal records on the federal level and by state.

For expert witnesses, this should be a quick search just to cover your bases. For individuals on the jury, the plaintiff, and the defense, it may take more time. Search for people with the same name in addition to the exact individual you know. Common names especially will turn up people who are not the individuals you are looking for but are close enough results that the jury may be confused as to who exactly the records refer to. False hits can be just as important as true results.

A Note on Online Criminal Background Check Services: There are online services that will search for criminal records. You do have to pay for the services. We do not recommend that you rely on these services. The records are not necessarily true; they mainly search freely accessible databases like the ones mentioned below and can contain errors such as if individuals have the same name. You can find the same information gathered in those services by searching databases like those noted below. Jurors are unlikely to pay for services, so to do what they're most likely to do, use the free services below.

However, a juror may already have blanket access to these services – such as through a friend. This is not likely, but when you can't afford to miss anything, or have reason to suspect there might be something to find, go ahead and be thorough by using the fee-based search services.

Federal level records (free) can be found through:

- The Federal Bureau of Prisons (<http://www.bop.gov/iloc2/LocateInmate.jsp>). This will find information on individuals incarcerated since 1982.
- The National Sex Offender Registry (<http://www.fbi.gov/hq/cid/cac/registry.htm>)

In Practice:

Defense's tire expert – Matt Nisco

There is a Matt Nisco listed as a registered sex offender in South Carolina. It is not the Matt Nisco in this case, the defense tire expert, but jurors may find and mistake him for the other one. Jurors aren't likely to notice or even know the expert's middle initial, which is a different initial from the other Matt.

- In very few cases, a Freedom of Information Act request to the United States Parole Commission (<http://www.justice.gov/uspc/foia.htm>) may be useful. Significant time, often weeks or months, can be involved with this kind of request, so its use should be limited to when you have reason to believe that the individual does have a record not noted elsewhere. Instructions are available on the Web site if you do pursue this option.

State and county level records vary from state to state as to how much information can be found online. Some departments that have information include:

- Department of Corrections
- Department of Crime Control & Safety
- State Bureau of Investigation
- Office of the Sheriff

Step 6: Search for political information.

Finding out which political party a person associates with may not seem particularly useful. However, any of the information you find while researching, including political information, can provide a clue to the next step. It can also reveal aspects of the person's personality.

There are three kinds of political information to search for: affiliation, contributions, and military experience. Consider all of the information together as well as separately. An individual piece of information, such as a person a registered Democrat, may seem unimportant on its own. However, consider that piece in light of what else you know. If that individual regularly contributes to Republican campaigns but is a registered Democrat, what's going on there?

- A. Affiliation: If possible, check voter registration records for registered party affiliation. These are often available through the Web site for the Board of Elections for the county in which the individual lives.
- B. Contributions: Want to know what political contributions the person has made? Check out the Federal Election Commission's database (<http://www.fec.gov/finance/disclosure/norindsea.shtml>). Political contributions have to be reported, and the data provided here is more accurate than performing a quick search in Google. While most political party contributions don't tell you much, a contribution to a controversial or unusual candidate can tell you a lot. For example, a prospective juror who gives money to Ron Paul, Al Sharpton, or Dennis Kucinich is likely to have some associated values and attitudes that can impact how she reacts to your case.
- C. Military experience.

Service records are generally kept confidential. The military does not currently provide a searchable database of formerly active individuals, but there are some commercial sites that could reveal information. If you use those sites, be wary of any results you find since they are not necessarily validated by the government or military.

Some people include military information in their CVs. Sometimes the information was falsified. You can try to verify service by searching for what the individual may have been doing instead, like going to college. This is one kind of information that you may have to verify by a lack of other information.

In Practice:**Plaintiff's lead counsel – Bob Jones**

An article on a local news site reports that an individual with the same name and in the same state was dishonorably discharged. Because of this, we need to know whether the attorney on our side was in the service or not. We find that he did serve in the military during Vietnam. The confusion is easily cleared up in jury selection.

Step 7: Check out social sites like Facebook, MySpace, LinkedIn, and YouTube.

Like the individual's personal or business Web site, these sites allow individuals to post information about themselves, and they're the places where they're most likely to let foolish information be visible to the public. Hopefully your expert witness won't post a profile picture on Facebook of himself drunk at a party, but others involved in the trial may not think to remove such damaging pictures or information. Check the Facebook profiles for the individual's children. In one case, a kid referred to his lawyer dad as a "shark." So, Counsel, do you know where your child is? Better find out – he might be on Facebook writing about you!

Social sites can also provide information not found elsewhere, such as the individual's interests and affiliations. If the individual you're researching has tight privacy settings, you may not be able to see their full profile, but some information is generally available for the public to view, such as who their friends and associates are.

An expert witness may post a video online that records him or her making statements that would be helpful for the current case. Videos on YouTube may be posted with or without the permission of the people in the video, so you may find some revealing information. Searching by the person's name is usually the easiest way to find relevant videos. That way you'll also find damaging videos of people with the same name.

In Practice:**Plaintiff – Caleb Winters**

The plaintiff worked in the drama department of a major university for a long time. There are videos on YouTube of the productions in which he collaborated, and some of them are extremely homoerotic. He has also written extensively on gay topics. You may need to screen prospective jurors for anti-gay attitudes.

Plaintiff's first brain damage expert witness – Daphne Cash

Daphne is a public figure, and there are many videos of her on YouTube that give you and the jurors a chance to see her in action. In contrast to the crass, off-putting commercialism of her Web site, the way she handles herself in the videos conveys a professional, assuring demeanor. While videos on the Internet can hurt cases, the videos of Daphne could really help this case by helping to establish her as someone with credibility.

On a negative note, Daphne also made demeaning comments that were caught on camera. The comments were specifically about a celebrity mother, but they came across as anti-working mother. The comments came off as extremely catty, not at all the comments of a professional psychiatrist. Jurors may be offended by these comments and by other, left-wing comments Daphne has made.

Step 8: Try to locate religious information.

You can't always find religious information. Some religious affiliations will be on the individual's personal or business Web site or it could be on a social site like Facebook.

Some churches have online directories. News articles and event photos can also provide this information.

This information is more or less important depending on the kind of case, much like the military service information. When religious information is important, find out before doing the online research whether the judge will let you ask about religious information via a pre-trial written juror questionnaire or in oral voir dire. Also, many jurors will tell you where they go to church when you ask what they do with their “non-working hours and weekends.”

When religion is important, make sure that before jury voir dire you do the research necessary to find out the nature of every church in the venue. Is the prospective juror a snake-handler or a Unitarian?

Make sure to check what is online about the religious affiliations of all individuals in the case whether it seems relevant or not. Do this before you hire experts. There can always be something harmful online. In many American communities, you may be gambling by hiring an expert who belongs to or teaches in a very unpopular church, other house of worship, or even a cult.

In Practice:**Plaintiff's lead counsel – Bob Jones**

Bob Jones is a member of a local non-denominational Christian church. He provides this information in his biography on his firm's Web site. This seems innocent. However, the church is involved with regular demonstrations outside local abortion clinics. Even if jurors don't see the original newspaper articles about the demonstrations, the news organizations have electronic archives that provide access to articles from the past few years. A very simple search of the news organizations' Web sites revealed multiple articles about the church's demonstrations.

Some news sites provide free access to current articles but charge for access to older ones. Even if a juror doesn't want to pay to see the full article, the headline may contain enough information that the juror will seek additional information elsewhere or will just draw conclusions from that. Article headlines in this case were very explicit about how the church members' demonstrations have occasionally bordered on violence. Belonging to many other non-denominational churches would not be a problem, but this church one has a very solid reputation as being confrontational in a way that could be good or bad for the plaintiff depending on the political and religious views of the jury.

Step 9: Miscellaneous

Depending on the individual, you'll need to search for additional things. You won't need to find this information for everyone. Whether you need to do these searches depends largely on the kind of work that the person does. Searches you may want to run:

- A. Licenses or other credentials: These can be medical, building, teaching, or other professional licenses. Go to the organization or agency that grants these credentials, like the American Bar Association or the state medical board. Make sure that the person has an operating license, and see if it was ever revoked. How to find this information will vary by the kind of license that the individual has, so you may need to check a variety of Web sites. Do not assume that being licensed in 49 states means things are as they should be in #50.

In Practice:**Defense's tire expert – Matt Nisco**

When looking into the licenses for the Matt Nisco, we have to go to several Web sites for information. He claims to be licensed in several states, so we check the Web sites for each state he mentions. The Web site for the Michigan Department of Energy, Labor, and Economic Growth allows users to check a variety of professional licenses, including accountancy, cosmetology, and security guard. Here, we found that Nisco's Professional Engineer license had been suspended in 1985 – and why, which can be very useful.

Plaintiff's first brain damage expert witness – Daphne Cash

We looked into Daphne Cash's education and found something that a juror may really have a problem with. She was born and raised in New England, but she went to medical school in Grenada. Was she not good enough to get into a medical school in America? A juror may think that a degree from a school in Belgium isn't as good as one from a proper American school, so she probably doesn't know what she's actually talking about, especially considering how flamboyant her Web site is. This seemingly minor fact can provide a convenient hook on which defense jurors can hang their defense verdict.

- B. Ratings and Popularity: Doctors and teachers often receive online feedback from patients and students. Sites like RateMDs (www.ratemds.com) allow patients to post comments about their experiences. Sample comments include, "Doctor thought my 18 year-old daughter, who had a kidney stone, was just there to get drugs." Rate My Teacher (www.ratemyteachers.com) included this review about a high school teacher, "She will make fun of students and make small comments to bring down one's self esteem."

Being able to post anonymous comments may make someone feel more comfortable giving a well-earned bad review. It could also make it easier for someone to lie, too. Real reviewers and people with an agenda may be posting comments. Jurors won't be able to tell the difference.

Non-disclosure agreements for patients are not uncommon, and if a patient signs one when receiving medical services, the patient can be prevented from posting a public review on sites like Angie's List (www.angieslist.com) and Zagat (www.zagat.com). While those agreements do not prevent a patient from suing for medical malpractice, the patient may be prevented from posting public comments about his or her experience with the doctor.

In Practice:

Since all of the experts witnesses in this case are practicing doctors, we checked out their ratings. Though there was nothing particularly telling about the ratings in this case, patients can divulge details about the doctor's personality, professionalism, waiting times, bill issues, or whether the patient felt like the doctor actually cared. Watch the dates of when the comments were posted. If they were posted recently, the comments may have been planted to project a particular image of the doctor for jurors to find. If your client is a doctor, or if you have medical

experts, they may have a lot of recent negative comments. You may be able to have the comments removed before the trial begins and jurors see them.

In this case, since many of Daphne Cash's patients are celebrities, they may not want to post reviews that could reveal they've been to her for help. According to Daphne's medical license, she spends half of her time with patients, so either she lies about how much time she spends helping people, or she is more active with patients than she initially appears. So when she's on the stand, get her to talk about her work with patients. That will help counter her very public, celebrity image that may undermine her with some jurors. Jurors like experts with continuing real-world experience and not just academic, media, or testifying experience.

C. Publications

You may have already found some publications on the individual's Web site. This is not the only place jurors can find what they published. To find out what a juror might know, you should also check journal archives and news sources.

Look for items that the person wrote besides full articles. If your expert wrote an editorial a few years ago about how great a certain medical procedure is, his credibility is undermined if he's currently testifying about the negative consequences of that procedure. The expert is unlikely to list the editorial on his CV as something he authored, but it will turn up if a juror does a broad search in a search engine. It may not matter to jurors that the expert wrote the editorial before more research showed the negative effects of the procedure. All the juror will know is that he said one thing a few years ago and is now contradicting himself under oath.

In addition to reviewing the article content, look at the citations. Are they legitimate citations, or were they made up? Even prestigious journals have been known to falsify data, or leave unchecked citations in articles that prove false when a juror looks. Few jurors will go that far, but once in a while one will – and you should, to make sure that the rare juror does not find something that makes your expert look very bad, and to find anything you can use against a defense expert.

- Popularity and feedback: You're probably already accustomed to finding documents that people involved in the trial have written. Take another look, though. Did your expert witness write articles or books? If they published books, check out the listing on Amazon's Web site, or another book seller, and see what people said about it. If the person wrote articles, you may also be able to find reader comments about them.

In Practice:

Plaintiff – Caleb Winters

The plaintiff, Caleb Winters, is a former professor at a major university. He worked in the drama department and wrote several books about acting and the theatre.

The books he wrote are about gay characters in plays, and how some characters (and playwrights) who are thought of as straight are really gay.

Before jurors even see the plaintiff, they can find through a very simple search that the plaintiff does not try to hide his sexual preference and lifestyle. Some jurors will see the books as promoting a deviant lifestyle encouraging homosexuality.

Very unfortunately for this plaintiff, there is another gay man with the name Caleb Winters, even the same middle initial and around the same age. A name does not have to be common for someone else to have it.

This other Caleb and his partner live on a large piece of property in New England and invite gay men to use the area as a mountain retreat. This other is also an artist who draws only naked men.

The very public lifestyle that this other Caleb entertains can be a problem for our plaintiff. Many jurors believe homosexuality is an abomination to God that can lead to the divine destruction of the community. The jurors don't have to be extremely conservative to have a problem with the lifestyle that they find when they do a search for "Caleb Winters." Our plaintiff may be gay and open about his sexuality, but the false Caleb has a much more in-your-face online presence that seems to recruit others to homosexuality. The two Caleb's were extremely difficult for us to distinguish, but jurors can get interested and follow every lead without ever realizing there's a distinction to be made.

In this case, the "real" Caleb – the plaintiff – happens to be gay. If he were not, the problem would still exist because it's so easy for jurors to find his online presence and assume he's the plaintiff.

Plaintiff's second brain damage expert witness – James Wagner

James Wagner, one of the plaintiff's brain damage experts, has written several medical books about brain injuries. They have excellent ratings on Amazon and seem to sell very well. When jurors find this, it will help establish Wagner as a credible source on brain injuries even before he takes the stand.

Finding that easily accessible online feedback about the expert is a plus when deciding whether to use him.

Plaintiff's first brain damage expert witness – Daphne Cash

Daphne's books have been met with very mixed reviews, and some of the comments are more than a little negative. One reviewer said that Daphne should be jailed and, "If you're in this book's target audience, you are already far too dim to comprehend just why this book is so lousy." The reviewer is from North Carolina where the trial takes place.

Finding these kinds of negative reviews is why you need to research the individual before signing him or her to the case. If you've already signed Daphne to the case before you find these reviews, you can only cope with the situation. If you know about it beforehand, you can avert it entirely.

- Soapbox or informative: Some people just write articles so that they can voice their opinions. Are the publications more opinionated or are they intended more to get information out there?

Finding published material and reader comments about it on Amazon, Barnes & Noble, and other such sites is one of the easiest searches a juror can run. Though nothing like this was found in our working case since medical experts rarely criticize one another in public print, there was an incident in a non-medical field with books a witness had written. The books are sold on Amazon and are written for a professional audience. While their ratings seem great at 4.5 stars, there is something odd about the comments. Most readers like the books and rate them well, but a handful of readers have written scathing reviews. Oddly enough, the bad reviews are all from people in California, where the expert lives. This could be an attempt by his competitors to discredit him; it could be plants from the opposition in this case or other cases. Or it could be the only “true” reviews from people who know him best.

In Practice:

Defense’s brain damage expert witness – Larry Kane

While researching the medical expert witnesses, we found that Larry Kane, the defense’s brain damage expert witness, published only short articles so that he could damage everyone else’s credibility.

Kane badmouths researchers and those working in academia, people who are often put on the stand as expert witnesses (“Academics may be good researchers but terrible teachers.”). You could use his opinion to undermine other defense experts, if they are mainly academicians. Kane even writes that *only* those who are primarily expert witnesses or have significant experience testifying are capable of being good witnesses. It’s very obvious that he wrote the articles as marketing in order to promote his expert witness business.

D. Work on Previous Cases

You may already be familiar with how an individual has assisted with previous cases, but what are your jurors finding? Jurors will not find or read the summaries of all of the cases the individual has worked on, but they can easily find some of them. You may also find information that surprises you, such as cases that embarrass the person or that could undermine the person’s current work.

In Practice:

Defense’s brain damage expert witness – Larry Kane

Larry Kane has worked on a lot of cases. He was pretty involved with the tobacco cases in the 1980s and 1990s. He even testified before Congress. The statements he made during these cases, as well as the side that he was trying to help (big tobacco), is good for us and not so good for him anymore.

Kane doesn’t mention these cases on his Web site or in the wealth of information he provides online. He worked for the tobacco companies and heartily

defended them and denied many of the health consequences of smoking. Several times he testified that nicotine was not addictive, that people who stop smoking don't go through real withdrawals like people with *real* addictions.

Since Kane made these statements, the public sentiment has turned increasingly against tobacco. While tobacco farmers may like that he tried to defend their livelihood, Americans will see his comments as deceptive and intending to harm their health. He's a psychiatrist and is supposed to help people, but in these cases, his goal seemed more motivated by money from big tobacco than in the best interests of the people. Knowing this, he may have minimized his tobacco activities in his CV – but once you get the details for yourself, you have some potentially great impeachment and undermining material. "You're the same Dr. Kane who testified under oath that tobacco is not addictive?" and, "That was what the tobacco companies paying your bill wanted you to say?"

Plaintiff's first brain damage expert witness – Daphne Cash

Daphne has been involved in some high-profile cases that could work in our favor. She worked with a famous case in which a woman in a coma had the plug pulled. Daphne served as an expert witness for the family that was fighting not to have the plug pulled on this woman, who was unable to survive without the assistance of medical equipment. This will help establish how she fights for life and the rights of the individual. On the other hand, it will deeply offend jurors on the other side of this issue. Before signing her on, you need to assume jurors will know or learn about it, and consider how much it might affect jurors in your venue.

Start Researching!

As you can see, research doesn't just mean going to Google. Relevant information can be found in a variety of resources and can vary highly from case to case.

Performing good, thorough research will take time, but it will help ensure that once you get into the courtroom, you won't be blindsided by outside factors. If you cannot do the research yourself and know that you're doing it well, distribute the research to others assisting with the case. In cases of high importance, particularly longer cases during which jurors will have far more time to go online, consider using a professional researcher. You never know where a juror's wander through the internet will lead him. So when jurors have ample wandering time or reason, you want to make sure that your side got there first so you know what to do about everything the jurors can find.

If you have questions about anything in this article, please contact:
Lauren Havens at lauren@itk-research.com.

Addendum: What's *Actually* Online that Damages Your Argument

We conducted an online search for material that supports the defense's argument, that the plaintiff could not have sustained brain damage from a low-speed rear-end car accident. Unfortunately, there's a lot out there that will kill your case if jurors find it and tell the other jurors about it.

The easiest way to get a quick idea of what's available online about a topic is to do a simple search in a search engine like Google or Bing.

From the Google search box, there are a variety of keywords and phrases that jurors may use and that you should try, too, for this or any other case.

How to Conduct a Simple Search

The simplest search is just to list several common words and phrases in the search box:

Ex. car accident brain injury

The search engine finds Web pages that contain all of those words but in no particular order on the page.

For this case: car accident, brain injury, brain, brain damage, car, vehicle, injury, damage, low-speed, low-speed accident, rear-end collision, rear-end, collision, long-term effects, physical therapy.

Consider synonyms and words that may be associated or that a juror would think of. In court you may talk about "sustaining a traumatic brain injury," but will a juror search for that or for "getting hurt on the head" or "head injury"?

For this case: Traumatic brain injury, head injury, brain damage, head damage, concussion, whiplash, hurt head, physical damage.

Use quotations to locate pages with an exact phrase: "injuries sustained from a rear-end car accident"

This found a lot of results about the kinds of brain damage that could occur from a variety of car accidents, not just the low-speed ones discussed in court. Plus, they're really not turning up the information that I, the juror, want to find that will refute your arguments.

Find results that have an exact phrase but also have other words on the page: "injuries sustained from a rear-end" car accident brain damage

The results from this search were primarily from sites hosted by law firms or directing the reader to find a lawyer if he has been in such an accident. Since the juror is going to disregard these sites as biased in favor of the plaintiff anyway, these sites are going to be disregarded, at

best. At worst, they're going to anger the juror against you even more since he'll see an entire industry that is trying to make money off the pain of others.

To get rid of result hosted by lawyers or legal firms, exclude results with those words: `car accident brain damage -legal -law`

Don't forget about variations of words, including plural, possessive, or having spelling variations (even common misspellings). For example, "Injury" will find different results than "injuries."

Searching Medical Sources

Since the juror is looking for information on a medical condition, he would not just use Google but would seek out sources tailored to providing medical information. The juror would not just want an overview of a condition. He wants to see facts from the scientific community.

This means that he will find, whether he searches for them specifically or not, scientific papers that were originally published in respected sources, not just posted on a blog or personal Web site by a rogue scientist. Some of these papers were found using the searches noted above in Google.

One medical resource that a juror may search is PubMed (<http://www.ncbi.nlm.nih.gov/pubmed/>), which provides abstracts and often full-text papers that were published in respected scientific journals. Many papers supporting the defense's arguments were easy to find here.

An Absence of Evidence

The search for evidence that physical harm is unlikely to occur in a low-speed car accident is a bit tricky. The presence of a possible medical condition (the plaintiff's position) is easier to support with evidence than it is to provide evidence that the condition does not exist (the defense's argument). Proving an absence of something is just harder to do.

So, jurors are likely to initially encounter a great deal of information about the medical condition that the plaintiff claims to have, but that will not stop a juror from finding information contrary to your arguments. It may take a few search attempts before the juror realizes that just searching `car accident brain damage` will not yield the information that he wants.

While it may not be popular to try to prove the absence of a deity, one of the classic cases of "absence of evidence is not evidence of absence," there is a definite incentive for insurance companies or others to find evidence for the absence of physical harm in low-speed accidents. Where there is an interested party, there is the possibility for biased information.

Since insurance companies really want to convince people of a particular truth, they don't disseminate information just randomly on the Internet; they pay professional researchers to do research and report the results in respected journals. Other businesses with a certain interest do the same thing, like when a manufacturing company pays researchers to find that workers encounter no physical harm from handling chemicals in the manufacturing plant.

Researchers' articles are searchable in PubMed and elsewhere on the Internet as a result of the journals' publication process. Since people - scientists and the public - respect the science reported in those respected journals, other researchers believed the reports and referenced them in their own studies, which further distributed the information and increased the effect of the pyramid effect in this case.

The Pyramid Effect

This brings up the pyramid effect. Once a juror finds one page or article that fits his needs, that document or how he searched to find that item is likely to lead to additional sources. Articles especially are likely to do this since they cite other articles that the juror will then access.

Once the juror gets started on this path of finding an article and then finding other articles cited in the first, it's easy for the juror to get tunnel vision, forgetting that there are contrary opinions. Articles are cited in papers not because the author disagrees with those articles (generally) but because those articles support the author's current work.

Once the juror finds a few articles that claim that low-speed collisions almost never cause physical damage, it starts to look like the defense has a solid case. The juror may not search for evidence supporting your case. You have to show him that what he found supporting the defense is erroneous, but you have to find these items before you know what you're fighting.

Damaging Quotes Found

"No test subject reported having discomfort symptoms during or immediately after any of the test collisions."

When test subjects did finally have discomfort, "No treatment or therapy was needed and none of the test participants had any further symptoms that related to their test exposures for greater than 18 months following the testing."

"An identifiable threshold exists and has been documented that relates velocity at impact to injury potential. The threshold of injury is above that of vehicle damage."

"There is a direct correlation between the severity of impact forces and the probability of developing chronic symptoms."

"Most people recover from head injuries and have no lasting effects."

A chart with the results of crash tests on human subjects, the speed of the collision, and any symptoms. These were low-speed collisions, and the chart would be really damaging if the defense used this in court without the plaintiff's counsel being aware of the limitations of the study or having other studies to back up their side.

"The impacts resulted in no injury to any of the human volunteers, and no objective changes in the condition of their cervical or lumbar spines. The results indicate a minimum injury tolerance to low speed rear-end impacts for males and females."

"Proponents of this pathology argue that the quest for compensation generates malingering. Litigants might remain "sick" because of the "rewards" they are given or are likely to obtain by remaining hyper-disabled by the compensation system."

"The likelihood of significant injury arising from a low speed rear impact collision is the subject of scholarly debate." This makes it sound as though it's not really clear if significant injury can arise from such an impact, which puts the plaintiff's case in doubt if it really is so unclear even among experts.

"The most severe symptom reported in these tests was minor neck pain lasting one week."

"Most claim adjusters have a general understanding that low velocity rear end accident scenarios do not produce significant injuries and at best might produce some short term transient muscle stiffness and perhaps mild aches and pains. However, most claim adjusters do not have an understanding, biomechanically, that their intuitive sense regarding minimal injury potential is actually supported by scientific biomechanical engineering principles and tests."

"Indy race car drivers have been subjected to 80 g's without permanent injury."

"The prevalence of chronic neck pain in the general population is the same as the risk of late whiplash following an acute whiplash injury."

"The 'limit of harmlessness' for stresses arising from rear-end impacts with regard to the velocity changes lies between [6.2 mph] and [9.4 mph]."

"Symptoms commonly attributed to whiplash injuries following low-speed motor vehicle accidents, particularly chronic neck pain, are psychogenic."

"It is highly unlikely or impossible to injure the temporomandibular joint in a whiplash-type motor vehicle accident injury."

"The likelihood of transient acute neck and shoulder muscle strain injury and possible mild compressive irritation of the posterior neck may increase" at a delta V of 5mph.

A low back injury is "quite unlikely as a result of a low velocity rear end collision."

"A 10-mph rear-end impact for an unsuspecting occupant was within human tolerance for injury."

"Whiplash injuries, particularly late whiplash, are less common in countries where no remuneration exists for the injuries and their long-term sequelae, or where awareness of the injury is not thought to be widespread."

"Specific actions or movements common to daily living or sports and recreational activities don't cause injury, yet involve forces similar to, or higher than, those produced in whiplash injuries."

"Acute whiplash injuries do not cause, or are unlikely to cause, chronic pain."

"A rear impact with a change on velocity of [5 mph] or less is within tolerance for a reasonably healthy occupant."

“How much force is necessary to cause permanent brain damage is under study, and hence still unclear.”

“The collision that usually causes the least amount of damage is called a low speed impact crash. A low impact crash is generally is defined as one that takes place at speeds under 10 miles per hour (mph).”

“Many times, the term ‘litigation neurosis’ is used to describe those who complain of persistent symptoms in what seems to be a minor accident.” Catchy term, isn’t it? If a juror found this term, he’s likely to search for it and find a lot more information. Litigation neurosis has been the verdict in several court cases that the juror may read about.

“How many times have we heard I was only going a few miles an hour or I had just started forward at the red light when I hit them. They are only after the money. How can they say they are injured that severely?”